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In re Application of :  
Melvin A. Zehr :  
Application No. 10/008,407 : DECISION ON PETITION  
Filed: November 13, 2001 :  
Attorney Docket No. DOAZ113 :

This is a decision on the petition filed on June 7, 2004 by which petitioner requests withdrawal of holding that this application stands abandoned for failure to file a timely reply to the final Office action dated September 16, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required. A facsimile transmission of a duplicate of the petition was filed on June 19, 2004 has been discarded. See 37 CFR 1.4(b).

The petition is granted.

Petitioner alleges that this application is not abandoned because petitioner did in fact file a timely reply to the Office letter in question. Petitioner supports this allegation by submitting a copy of the reply, and a copy of a post card receipt showing that these papers were received in the Office on December 8, 2003, a date within the period set for filing a reply to the Office letter in question, as extended. Because the reply was directed to a final rejection, it has been submitted to the Primary Examiner for review. The Primary Examiner reports that the reply complies with 37 CFR 1.113 and 1.116. Based upon the evidence of timely filing and the report of the Primary Examiner, it is clear that this application is not abandoned.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner for entry of the reply that is attached to the petition. The date to which the reply is entitled is December 8, 2003. Thereafter, the application will be forwarded to the examiner for immediate action.

PETITION GRANTED.

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